



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT FF

Introduction

This hearing was convened as a result of the Occupant's Application for Dispute Resolution. The Occupant applied for an order of possession, pursuant to section 54 of the *Residential Tenancy Act* (the "Act"). The participatory hearing was held, via teleconference, on December 23, 2022.

The Owner and the Occupant both attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Occupant stated that she served her Notice of Dispute Resolution Proceeding and evidence package to the Owner by posting it to the door of her "Bunkie" where she lived in the summer. The Owner confirmed that she resided in this Bunkie for a few months in the summer, but she also asserts that she also lived in and used her portion of the main house on the property. The Owner stated she did not receive the documents because she was out of the country. However, pursuant to section 90 of the Act, I find the Owner is deemed served with this package 3 days after it was posted to her door. I note the Owner was actively using this Bunkie, recently, as part of her living accommodation.

The Owner stated she sent her evidence via email to the Occupant and the Occupant acknowledged receipt of these documents. No issues were raised with service of these documents.

Preliminary and Procedural Matters

During the hearing, the living arrangement was discussed in detail, and both parties had a chance to speak to this issue. After reviewing the testimony and evidence on this

matter, and prior to making any determinations on the merits of the application, I find it important to determine whether or not I have jurisdiction to consider this matter. Below is my analysis on the matter.

I note that there is no written tenancy agreement. It appears the Occupant moved into the rental unit sometime in October 2018, and has lived there for nearly 4 years. At the outset, the parties had a friendly relationship and at some point, the relationship started to degrade. The Occupant stated that she is now residing on the Lower Mainland somewhere, without a functioning key to her rental unit, and is hoping to gain access to this unit, and continue living there, despite her currently “awkward” relationship with the Owner.

The Owner explained that she owns this property, and there are multiple people living on the property with her. More specifically, the Owner stated that there is a 4-bedroom house, with one kitchen, where she and her child have lived for the past few years, since the Occupant moved in. The Owner stated that the space the Occupant rented was within her single-family home, and the Occupant rented 2 of the 4 bedrooms (and a full bathroom).

The Owner stated that when the Occupant moved in, around October 2018, their relationship was amicable, and the parties shared several common living areas, laundry and a main kitchen. The Owner stated that she and the Occupant (and both of their children), would often share meals and cook using the same kitchen. The Owner stated that this lasted for a significant period of time, at least into the following year.

The Owner stated that the Occupant, at some point, wished to have a little more privacy and a privacy screen was put up to help separate the Occupant's two rented bedrooms and their private bathroom. The Occupant asserts that it was a wall of sorts, but the Owner stated that it was not a formal wall, did not have any nails, and was not permanent. The Owner asserted that the home remained as a single-family home, with shared living spaces, laundry, shared main kitchen, and common locks on doors.

The Owner stated that the Occupant brought their own fridge and freezer into their area, and had a small hotplate and a sink. The Owner stated that she solely resided in the main house with the Occupant for the entire time, except for this last summer, when the Owner also started to occupy both her living space in the main house as well as a Bunkie in the back yard (just for summer).

The Occupant stated that there was a separate entrance for the rooms they rented, and they were generally unable to access the Owner's area from inside because of the privacy partition. Although, the Occupant did not refute having access to the living areas of the main house, the laundry, and the main kitchen.

I turn to the following portion of the Act:

What this Act does not apply to

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

I have reviewed the testimony and evidence on this matter. When the Occupants moved in, I am satisfied that they shared a kitchen with the Owner, who also lived in the house. I find the Act clearly excludes this type of accommodation. I note the Occupants obtained their own fridge/freezer, and acquired a hotplate. However, I note that it appears the Occupant still had access to some of the shared living spaces that were communal with the Owner. Although the kitchen was shared more heavily at the start of the living arrangement, it appears the Occupant still had access, and did not have a full kitchen of their own. I note there was a wall or space divider of sorts that was put between the Owner's space and the Occupants. However, I find it more likely than not that the parties still shared many common spaces, including a kitchen, at times. Further, there does not appear to be any clear communication or agreement between the parties about the Occupant no longer having access to the kitchen that was shared at the start of the arrangement.

Since one of the owners shared a kitchen with the other occupants, I find the Act does not apply, and I decline jurisdiction on this matter. I dismiss the application, in full, without leave to reapply.

Conclusion

I decline jurisdiction on this matter. The application is dismissed in full without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 28, 2022

Residential Tenancy Branch